

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SAUL FALCON,	*	
Petitioner,	*	
vs.	*	Case No. 5:08-CV-9037 HL 28 U.S.C. § 2255
UNITED STATES OF AMERICA,	*	Case No. 5:07-CR-16 HL
Respondent.	*	

REPORT AND RECOMMENDATION

On July 9, 2009, the Parties to this action filed a Joint Motion For Recommendation (Doc. 528), wherein they stipulated (1) that Petitioner Falcon should be afforded an out-of-time appeal; (2) that a suitable method for perfecting such an appeal would be for the Court to grant Petitioner's Motion To Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 508), vacating Petitioner's judgment of conviction and reinstating the same instant, thereby resetting Petitioner Falcon's 10-day period after entry of judgment of conviction to file a Notice of Appeal pursuant to F.R.A.P. 4(b); and (3) that Petitioner's sentence related ineffective assistance of counsel claims be stayed pending appeal or dismissed without prejudice to refile the same following the resolution of his appeal. This procedure has been sanctioned by *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000).

WHEREFORE, IT IS HEREBY RECOMMENDED that the District Judge enter an Order setting aside Petitioner's judgment of conviction (Doc. 429) and instantly reinstating same effective as of the date of reinstatement, for the sole purpose of affording Petitioner opportunity to timely file a Notice of Appeal of the reinstated judgment of conviction pursuant to F.R.A.P. 4(b). Said Order should also effect the dismissal of Petitioner's present § 2255 Motion (Doc. 508) alleging claims of ineffective assistance of counsel, which may be re-filed in a timely Motion To Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, following Petitioner's appeal.

SO RECOMMENDED this 6th day of August 2009.

**S/G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE**